

ORIGINAL

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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LYNNE FREEMAN, an individual,

Plaintiff,

22 Civ. 2435 (LLS)

ORDER

- against -

TRACY DEEBE-ELKENANEY P/K/A TRACY  
WOLFF, an individual, EMILY SYLVAN  
KIM, an individual, PROSPECT AGENCY,  
LLC, a New Jersey limited liability  
company, ENTANGLED PUBLISHING, LLC, a  
Delaware limited liability company,  
MACMILLAN PUBLISHERS, LLC, a New York  
limited liability company, UNIVERSAL  
CITY STUDIOS, LLC, a Delaware limited  
company,

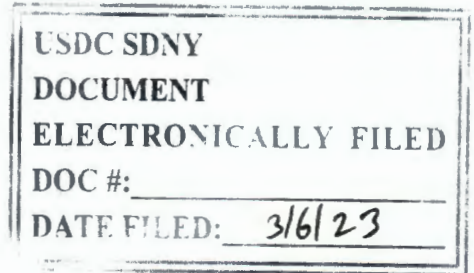
Defendants.

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**Background**

On January 11, 2023, Magistrate Judge Netburn ordered plaintiff to identify two manuscripts to serve as the primary works forming the basis of her copyright claim. Dkt. No. 105. Plaintiff subsequently identified Blue Moon Rising 2011 (April) (Document Nos. LF 03750 - LF 04352) and Masqued 4-13 (Document Nos. LF 06904 - LF 07371). Dkt. No. 110.

Plaintiff thereafter filed objections to the Order with this Court under Federal Rule of Civil Procedure Rule 72. Dkt. No. 112. Defendants duly responded, Dkt. No. 120, and in support of their arguments included three exhibits, filed under seal,



Dkt. No. 122 (Declaration of Benjamin S. Halperin). The exhibits include: Exhibit B, the first six chapters of the Masqued Manuscript bearing Bates Stamp LF 06904 - LF 07371; Exhibit C, an email that summarizes plaintiff's manuscripts; and Exhibit D, Copyright Registration Number TXu002282260. Id. Defendants argued that although they "would not object to these documents being unsealed, [they] have filed them under seal out of an abundance of caution to protect any confidentiality concerns by Plaintiff." Dkt. No. 119.

The Court granted plaintiff leave to apply for sealing of some or all of those documents, but cautioned that

"designating items as 'confidential' in agreed protective orders during discovery does not support their sealing when submitted to a court to affect a judicial result. In order to be sealed (and thus withheld from public view) the items must comply with the standards of Lugosch v. Pyramid Co. of Onondaga, 435 F. 3d 110 (2d Cir. 2006) and its progeny."

Dkt. No. 125. Plaintiff thus applied to keep under seal Exhibit B and C out of concern "that if they are not sealed that someone could copy them." Dkt. No. 137.

On February 27, 2023, the Court overruled plaintiff's objections to Magistrate Judge Netburn's Order. Dkt. No. 141. All that remains is for the Court to decide the parties' Motions to Seal, which are resolved as follows.

**Exhibit B**

Under the common law and First Amendment, the "right of public access to judicial documents is firmly rooted." Lugosch v. Pyramid Co. of Onondaga, 435 F.3d 110, 119-120 (2d Cir. 2006). "In order to be designated a judicial document, 'the item filed must be relevant to the performance of the judicial function and useful in the judicial process.'" Id. at 119 (quoting United States v. Amodeo, 44 F.3d 141, 145 (2d Cir. 1995)). "[T]he mere filing of a paper or document with the court is insufficient to render that paper a judicial document subject to the right of public access." Amodeo, 44 F.3d at 145.

Exhibit B is not a judicial document for the purposes of the underlying matter, plaintiff's objections to Judge Netburn's Order. In resolving that question, the Court evaluated whether the Order was clearly erroneous and whether Judge Netburn exceeded the scope of her authority.

However, Exhibit B was submitted to the Court by defendants to provide background information on the larger copyright dispute at issue and to allow the Court, if it wishes, to evaluate the works for itself. The Court did not need to evaluate the Exhibit when deciding the propriety of Judge Netburn's discovery decision to limit the number of manuscripts plaintiff could submit in support of her



copyright infringement claim. Inclusion of Exhibit B is thus at present an administrative convenience, and not yet a component of any ultimate determination of the merits.

Accordingly, the presumption to public access does not attach to Exhibit B at this time and it may remain under seal. If Exhibit B is submitted to the Court at a future instance, as in support of either parties' motion for summary judgment, its status as a document under seal will then be reevaluated in the context of its usage.

#### **Exhibit C**

Exhibit C, an email correspondence that summarizes in a brief blurb plaintiff's Masqued novel, is a judicial document. It was filed by defendants in support of their argument that Judge Netburn's Order was not clearly erroneous because it was not contrary to the Copyright Act. Dkt. No. 120 at 12. Specifically, defendants relied on it to show plaintiff's manuscripts were revisions of the same underlying novel and not discrete works. Id. As a review of Exhibit C is relevant to this Court's evaluation of whether the Order limiting the submission of the manuscripts was proper, it is a judicial document to which the presumption of access attaches.

Once the court has determined that the documents are judicial documents, it must determine the weight of that

presumption. Lugosch, 435 F.3d at 119. When, like here, the document directly affects an adjudication, the presumption to access is high. United States v. Amodeo, 71 F.3d 1044, 1049 (2d Cir. 1995) (Amodeo II).

Even when there is a strong presumption to public access, the Court must "balance considerations against it," including "the danger of impairing law enforcement or judicial efficiency" and "the privacy interests of those resisting disclosure." Lugosch, 435 F.3d at 120. Thus, documents may be sealed "if specific, on the record findings are made demonstrating that closure is essential to preserve higher values and is narrowly tailored to serve that interest." In re New York Times Co., 828 F.2d 110, 116 (2d Cir. 1987).

Here, plaintiff invokes her privacy interests and argues that if Exhibit C is "not sealed than someone could copy" her work. Dkt. No. 137. This reasoning does not provide a sufficient basis on which the Court can make an on the record finding that sealing is necessary to protect plaintiff's interest. This is especially true in light of the fact that Exhibit C is only a broad overview of plaintiff's work, which is already afforded protections against wrongful copying under the Copyright Act.

As plaintiff failed to show that her privacy interests outweigh the strong presumption to public access, the motion to seal Exhibit C is denied.

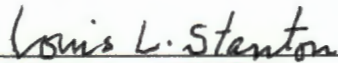
**Exhibit D**

"The burden of demonstrating that a document submitted to a court should be sealed rests on the party seeking such action." DiRussa v. Dean Witter Reynolds Inc., 121 F.3d 818, 826 (2d Cir. 1997). As defendants provided no initial reason in support of sealing Exhibit D and plaintiff declined to make any application to seal it, the motion to seal Exhibit D is denied.

**Conclusion**

The clerk's office is directed to unseal Exhibits C and D to the Halperin declaration, Dkt. No. 122.  
So Ordered.

Dated: New York, New York  
March 6, 2023

  
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LOUIS L. STANTON  
U.S.D.J.